THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
A.O. No. 1611 of 2001
Old F.A.F.O. No. 752 of 1995

Oriental Insurance Co. Ltd. through its Asstt. Manager,
Divisional Office No. 1, 16-A, M.G. Marg, Allahabad.
… **Appellant**

Versus

1. Smt. Phoolpari wife of late Sri Jathoo Sahani,
2. Master Ashok (minor) son of Late Sri Jathoo Sahani,
3. Master Santosh (minor) S/O late Shri Jathoo Sahani,
4. Km. Parvati (minor), D/O late Sri Jathoo Sahani.
   All minors, the respondent nos. 2,3 and 4 are represented by their natural guardian and
   Mother Smt. Phoolpari, the respondent no.1. All residents
   Of village Bhoora Rani P.O. Rudrapur, Tehsil Kicchha,
   District Nainital. (Claimants)
5. Dharam Chand son of Sri Het Ram,
   Resident of village Bhoora Rani, P.O. Rudrapur,
   Tehsil Kicchha, District Nainital.

… **Respondents**

Sri T.A.Khan, learned counsel for the appellant.
Sri Rakesh Thapaliyal, Adv. learned counsel for the claimant-respondents.
Sri S.K.Mandal, learned counsel for the owner-respondent no.5.

Date June 13, 2006.

P.C : Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** is directed against the judgment and award dated 2-5-1995, passed by the Motor Accident Claims Tribunal/ III Addl. District Judge, Nainital ***(in short the Tribunal)*** in Motor Accident Claim Petition No. 681 of 1991 Phoolpari and others Vs. Dharam Chand and another moved under Section 140 of the Act on the principle of no-fault liability, whereby compensation of Rs.50,000/- along with interest @ 10% per annum has been awarded in favour of the claimants against the Insurance Company-appellant as well as owner of the vehicle.

At the outset, it may be mentioned that the award of interim compensation under Section 140 of the Act is subject to adjustment in the final award passed by the Claims Tribunal and the

learned counsel for the appellant-Insurance Company has fairly conceded to this fact.

Brief facts giving rise to the present appeal that husband of the claimant no.1 Jathoo Sahani lost his life as a result of injuries suffered by him in a vehicular accident which occurred on 19-9-1991 at 3 p.m. involving Truck No. UP 02-9239, which was being driven rashly and negligently by its driver. It was alleged that the offending vehicle was insured with the appellant. The deceased was aged about 32 years.

Before the learned Tribunal the factum of death of the deceased was not denied and it was stated that the vehicle was duly insured at the time of accident. The learned Tribunal on the basis of no fault liability awarded compensation of Rs. 50,000/- along with interest @ 10% per annum in favour of the claimants for the death of Nand Kishore Arya.

The only contention of the appellant is that the learned Tribunal ought to have awarded interim compensation @ Rs. 25,000/- for the death of the deceased because the amending Act No. 54 of 1994 came into force w.e.f. 14-11-1994. The learned Tribunal has already considered this fact in the impugned order. At the time of passing the impugned order, i.e. 2-5-1995 the amendment in Section 140 was prevailing.

Moreover, since the amount of interim compensation on the principle of no fault liability is subject to adjustment in the final award on merits and it will be open to the appellant to seek redressal of its grievance subject to the final decision on the main claim petition under Section 166 of the Act.

Accordingly, the appeal deserves to be dismissed and is hereby dismissed. No order as to costs.

The amount is deposit with this Court, if any, shall be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants as directed by the learned Tribunal.

(B.S.Verma, J.)

RCP